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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

In the Matter of:

American Hardwood Industries  
4307 Plank Road  
North Garden, Virginia 22959

Respondent.

**ADMINISTRATIVE ORDER  
ON CONSENT**

Docket No. CWA-03-2016-0061DN

**I. STATUTORY AND REGULATORY BACKGROUND**

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA Parts in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such Part or requirement.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Federal regulations promulgated pursuant to the CWA define the phrase “waters of the United States” to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate commerce; (iv) tributaries of waters of the United States, and (v) all waters adjacent to these waters. 40 C.F.R. § 122.2.

5. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2

6. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that storm water discharges are “point sources” subject to NPDES permitting requirements under section 402(a) of the CWA, 33 U.S.C. § 1342(a).

7. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

8. “Storm water discharge associated with industrial activity” is defined as ‘the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant...’. The term includes storm water discharges from facilities classified as Standard Industrial Classification (SIC) 24.

9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

10. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia NPDES program on March 31, 1975. The Virginia Department of Environmental Quality (VADEQ) was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth’s request to transfer the issuance of general and individual NPDES permits from VADEQ to the Virginia Department of Conservation and Recreation (VDCR). On July 1, 2013 EPA approved the Commonwealth’s request to transfer issuance of NPDES permits from VDCR to VADEQ.

11. On July 1, 2009 Virginia issued General Permit No. VAR05, General Permit For Stormwater Discharges Associated With Industrial Activity, effective date July 1, 2009 and expiration date June 30, 2014 (the 2009 General Permit). The 2009 General Permit authorized the discharge of stormwater from industrial activity to surface waters of the Commonwealth of Virginia provided that the owner of a source covered by the 2009 General permit filed a

registration statement to be covered by the 2009 General Permit and complied with all the requirements of the 2009 General Permit. Table 50-1 of the 2009 General Permit, Sectors Of Industrial Activity Covered By This Permit, includes Sector A: Timber Products, which includes General Sawmills and Planning Mills, (SIC Code 2421).

12. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), EPA retains its authority to take enforcement action within Virginia for NPDES permit violations.

## **II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW**

13. American Hardwood Industries (Respondent) owns and operates an industrial operation as a sawmill facility, consisting of approximately 20.6 acres, located at 4307 Plank Road in North Garden, Virginia 22959 (the Virginia facility). The Virginia facility is classified under SIC Code 2421 as Sawmills and Planning Mills, General, and manufactures hardwood logs and lumber products.

14. American Hardwood Industries is a limited liability corporation registered in Delaware and therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

15. On June 3, 2009 Augusta Lumber, a branch of American Hardwood Industries, submitted a registration application to VADEQ in order to obtain authorization for the discharges of stormwater from the Virginia facility under the 2009 General Permit.

16. Respondent's Virginia facility discharges stormwater to Jumping Branch Creek and its associated tributaries. Jumping Branch Creek consists of "waters of the United States" within the meaning of Part 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

17. On February 10, 2014, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's Virginia facility (the 2014 facility inspection).

18. On June 16, 2014 EPA prepared a final Clean Water Act Compliance Inspection Report for the Virginia facility (EPA's Inspection Report).

19. American Hardwood Industries received a copy of EPA's Inspection Report. American Hardwood Industries prepared and submitted a response to EPA's inspection on June 5, 2014. American Hardwood Industries submitted a timely response to EPA's Inspection Report on December 7, 2015.

20. Based upon the 2014 facility inspection, EPA representatives identified the following violations of the 2009 General Permit and the CWA as described below.

**Count 1: Failure to Develop and Implement a Storm Water Pollution Prevention Plan with all of the Contents of the Plan Required by the 2009 General Permit: Facility Site Map**

21. Part III of the 2009 General Permit, "Storm Water Pollution Prevention Plan", states that "A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented for the facility covered by this permit. The SWPPP shall include Best Management practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented and maintained in accordance with good engineering practices to eliminate or reduce pollutants in all storm water discharges from the facility. The SWPPP shall also include any control measures necessary for the storm water discharge to meet applicable water quality standards".

22. At the time of the 2014 facility inspection, Respondent had prepared a SWPPP for the Virginia facility, maintained at the facility and last revised as of July 15, 2013 (the facility SWPPP).

23. Part III.B. 2. c. of the 2009 General Permit (Storm Water Pollution Plan, Contents of the plan, Site description, site map) requires a facility SWPPP to include a site map identifying a number of requirements.

24. Part III.B.2.c.(3) requires that the site map identify the location of all storm water conveyances including ditches, pipe, swales, and inlets and the directions of storm water flows.

25. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not identify all of the storm water conveyances within the Virginia facility.

26. Part III.B.2.c.(4) requires that the site map identify all the locations of existing structural and source control BMPs.

27. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not include the locations of all existing structural and source control BMPs. The site map did not include the rock check dams located upgradient of outfalls 01, 02, and 03, which were source controls for the control of storm water at the Virginia facility.

28. Part III.B.2.c.(6) requires that the site map identify the locations of potential pollutant sources at the facility.

29. At the time of the 2014 inspection, the site map included as respondent's SWPPP did not identify all the potential pollutant sources at the Virginia facility. Respondent's site map specifically failed to include the location of a portable toilet located southwest of the fuel island and upgradient of outfall 01, the used oil and hydraulic fluid storage area located at the north central portion of the facility, and mulch and bark stockpiles located at the southwestern portion of the facility, which were actively leaching non storm water onto the ground at the time of the 2014 inspection.

30. Part III. B.2.c.(8) requires that the site map include the locations of specific activities that are exposed to precipitation.

31. At the time of the 2014 inspection, the site map included as respondent's SWPPP did not include the mulch and bark stockpiles located in the southwestern part of the facility, the equipment maintenance area located to the south of Building No. 1, and the facility processing and storage areas, all of which are facility activities exposed to precipitation.

32. Part III. B.2.c.(9) requires that the site map included as Respondent's SWPPP include the location of all storm water outfalls and an approximate outline of the area draining to each outfall.

33. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not include an outline of the facility areas draining to each of the facility's three storm water outfalls.

34. Part III. B.2.c.(10) requires that the site map included as Respondent's SWPPP include the location and description of all nonstorm water discharges.

35. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not describe the mulch and bark stockpiles as a source of a nonstorm water discharge. During the 2014 inspection, the inspectors saw nonstorm water actively leaching from the stockpiles and moving downgradient toward outfall 03.

36. Respondent's failure to include all of the required information on its site map as part of the facility SWPPP is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 2: Failure to Develop and Implement a Storm Water Pollution Prevention Plan with all of the Contents of the Plan Required by the 2009 General Permit: Storm Water Controls**

37. Part III.B. 6.a. of the 2009 General Permit (Storm Water Pollution Prevention Plan, Contents of the plan, Storm water controls) requires the permittee to implement BMPs for all areas identified as potential pollution sources at the facility and to describe in the facility SWPPP the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water.

38. At the time of the 2014 inspection, the inspectors found that Respondent's SWPPP did not include Respondent's schedule and deadlines for implementation of selected BMPs and storm water controls.

39. Part III.B.6.b. of the 2009 General Permit (Contents of the plan, Storm water controls, Control measures (nonnumeric technology-based effluent limits) requires the permittee to implement specific BMPs to prevent and control pollutants in storm water discharges from the facility.

40. Part III.B.6.b.(1)(Storm water controls, Good housekeeping) requires the permittee to keep clean all exposed areas of the facility that are a potential source of pollutants to storm water discharges. This part requires that the facility SWPPP include a regular schedule for the pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers.

41. At the time of the 2014 inspection, the inspectors found that the facility SWPPP did not identify a regular schedule for the pickup and disposal of waste materials or a regular schedule for the inspection of drums, tanks and containers at the facility.

42. Part III.B.6.b.(4)(Storm water controls, Spill prevention and response procedures) requires the facility SWPPP to describe the procedures that will be followed for preventing and responding to spills and leaks. This part also requires the facility SWPPP to include contact information for individuals and agencies that must be notified in the event of a spill.

43. Section 3.3 (Visual Inspection) of Respondent's SWPPP at the time of the 2014 inspection includes regular inspections of the facility to check for spills or leaks of pollutants that could become storm water runoff. Section 3.6 of the SWPPP includes BMPs that Respondent has added to manage runoff.

44. Section 3.4 (Spill Prevention and Response) of Respondent's SWPPP at the time of the 2014 inspection lists specific practices to be followed, including "contain the liquid until

cleanup is complete”, “use an appropriate sorbent to clean liquid chemical spills before a rainfall”, and “control fuel spills with kitty litter, straw, or sawdust”.

45. During the 2014 inspection, the inspectors found that Respondent was not implementing the SWPPP spill prevention and response procedures at various areas of the facility. The inspectors observed visible petroleum product staining at the fuel island area southwest of the main office, at the used oil and hydraulic fluid storage area, and next to the equipment maintenance area located outside building No.1. The inspectors did not see that Respondent followed any of the listed procedures to clean spills in these areas. The inspectors also found that Respondent had not followed its SWPPP secondary containment procedures for potential pollutants for a 55 gallon drum of process oil and other containers of used process oil located in the equipment maintenance area, for four five gallon containers of debarking equipment oil located in the debarking equipment area, and for two fuel containers stored adjacent to the main office building.

46. During the 2014 inspection, the inspectors found that Respondent’s SWPPP did not include the required spill prevention and response notification procedures or contact information for individuals and agencies to be notified in the event of a spill.

47. Part III.B.6.b.(5)(Storm water controls, Routine facility inspections) of the 2009 General Permit requires that appropriate facility personnel regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water, and the inspection frequency be specified in the facility SWPPP. This Part requires a minimum frequency of quarterly inspections. Part IV.C.2.B. of the 2009 General Permit includes additional sector specific requirements for timber products and requires monthly inspections for specified areas of sawmill facilities.

48. During the 2014 inspection, the inspectors found that Respondent’s SWPPP did not identify the inspection frequency for routine inspections at the facility.

49. Part III.B.6.b.(6)(Storm water controls, Employee training) requires that the permittee implement a specific storm water employee training program and that the facility SWPPP include a schedule for the required storm water employee training.

50. During the 2014 inspection, the inspectors found that the facility SWPPP did not include a schedule for employee training and did not include documentation of a storm water training program that included all the required components of part III.B.6.b.(6).

51. Respondent’s failure to include all of the required storm water controls as part of the facility SWPPP, and Respondent’s failure to develop and implement all of the required storm water controls, is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 3: Failure To Maintain All BMPs Included In A SWPPP In Effective Operating Condition**

52. Part III.E. of the 2009 General Permit (Storm Water Pollution Prevention Plan, Maintenance) requires that all BMPs identified in the facility SWPPP shall be maintained in effective operating condition. If the required routine facility inspections identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event.

53. During the 2014 inspection, the inspectors observed the rock check dam controls that Respondent had installed as BMPs for the facility's three storm water outfalls. The inspectors determined that the three rock check dam controls were not working effectively because there was sediment deposition and accumulation upgradient of the check dams, potentially diminishing the containment capacity of the dams. The inspectors observed evidence of bypassing of the dam controls and erosion around the dam area. Section 2.6 of the facility SWPPP requires the dams to be "cleaned as necessary to prevent sediment from leaving the property", but the inspectors observed sediment accumulation around each dam.

54. Respondent's failure to maintain its BMPs in an effective operating condition is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 4: Failure To Conduct Annual Comprehensive Site Compliance Evaluations and to Modify The Facility SWPPP Following the Annual Evaluations**

55. Part III.C. of the 2009 General Permit (Storm Water Pollution Prevention Plan, Comprehensive site compliance evaluation), requires a permittee to conduct a comprehensive site compliance evaluation at least once a year. The evaluation shall include all areas where industrial materials or activities are exposed to storm water. Based on the results of the evaluation, the facility SWPPP shall be modified as necessary to include additional or modified BMPs designed to correct problems identified by the evaluation. The permittee shall prepare and certify a report summarizing the scope of each annual evaluation.

56. During the 2014 inspection, Respondent's representative stated that the facility had not conducted the 2011 annual comprehensive site compliance evaluation. Respondent did not produce any report that included information that a 2011 evaluation had been done at the facility.

57. During the 2014 inspection, the inspectors found that the 2012 annual comprehensive site compliance evaluation report, dated November 20, 2012, identified 14



corrective measures without the facility SWPPP including corrective action dates and documenting the BMP revisions.

58. During the 2014 inspection, the inspectors found that Respondent's 2012 annual comprehensive site compliance evaluation report was not certified by Respondent.

59. Respondent's failure to conduct all of the required annual comprehensive site compliance evaluations and to modify its facility SWPPP by including all BMP revisions occurring at the facility and to properly prepare each annual evaluation report is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 5: Failure to Document All Quarterly Visual Inspections of Storm Water Discharges Associated With Industrial Activities**

60. Part I.A.1. of the 2009 General Permit (Effluent Limitations, Monitoring Requirements and Special Conditions, Effluent limitations and monitoring requirements, Types of monitoring requirements and limitations) requires the permittee to perform and document a quarterly visual examination of a storm water discharge associated with industrial activity from each outfall, and to maintain the visual examination reports on site with the facility SWPPP.

61. During the 2014 inspections, Respondent was not able to document a quarterly visual inspection of the facility's storm water discharges for the second quarter of 2013 covering the period April 2013 through June 2013.

62. Respondent's failure to document a visual inspection of the facility's storm water discharges for the second quarter of 2013 is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 6: Failure to Prohibit Nonstorm Water Discharges**

63. Part II.B.1. of the 2009 General Permit (Special conditions, Allowable nonstorm water discharges) states that all discharges covered by the general permit shall be composed entirely of storm water, except as provided in Part IV. of the general permit.

64. Part IV.(Sector Specific Permit Requirements) 9VAC25-151-90. Sector A-Timber products, includes the requirements for discharges associated with industrial activity from facilities classified as, among other categories, sawmill facilities such as Respondent's facility. The only authorized nonstorm water discharges from timber product facilities are discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage. Under

this definition, there should be no chemical pollutants included in a storm water discharge from a sawmill facility.

65. During the 2014 inspection, the inspectors observed evidence of unauthorized nonstorm water discharges at the facility. The inspectors observed well water being pumped into a used 250 gallon tote container labeled "corrosive liquid, N.O.S; contains alkyl amines", which was actively overflowing onto the impervious surface adjacent to the fuel island located in the southwest area of the facility. The inspectors observed that this nonstorm water was actively flowing down gradient from the fuel island area across an impervious surface that contained numerous oil and fuel stains, through a series of two rock check dams, and discharging from outfall 01. The inspectors saw a visible organic sheen on the discharge from outfall 01.

66. Respondent's failure to prohibit the nonstorm water discharge described in paragraph 65 of this Consent Order is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311

### **III. ORDER**

AND NOW, this 10th day of February, 2016, pursuant to Part 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with Part 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Part 309(a) to do the following within thirty days of the effective date of this Consent Order:

67. Respondent shall take all actions necessary to comply with the effective Virginia General Permit For Stormwater Discharges Associated With Industrial Activity, including:

- a. Maintain the facility SWPPP as revised November 30, 2015 to comply with all of the requirements of the Virginia General Permit For Stormwater Discharges Associated With Industrial Activity ;
- b. Submit documentation of having retained a certified stormwater professional to maintain compliance with the Virginia General Permit For Stormwater Discharges Associated With Industrial Activity ;
- c. Submit a complete description of the stormwater training for the facility employees and incorporate that training into the facility SWPPP; and
- d. Submit copies of all documents prepared pursuant to this Paragraph 67 to Joy Gillespie at the address listed in Paragraph 68 of this Consent Order within 30

days of the effective date of this Consent Order.

68. All documents required by Paragraph 67 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed \_\_\_\_\_  
Title \_\_\_\_\_

All documents required herein shall be submitted to:

Joy Gillespie  
Enforcement Officer  
NPDES Enforcement Branch  
Mail Code (3WP42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **IV. GENERAL PROVISIONS**

69. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

70. This Order does not constitute a waiver or modification of the terms or conditions of the applicable General Permit For Stormwater Discharges Associated With Industrial Activity. Compliance with the terms and conditions of this Consent General Permit For Stormwater Discharges Associated With Industrial Activity Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

71. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

72. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

73. By entering into this Consent Order, Respondent does not admit any liability for the civil claims alleged herein.

**V. EFFECTIVE DATE**

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 2/10/2016



Jon M. Capacasa  
Director, Water Protection Division  
U.S. EPA Region III

AGREED TO:

Date: 1/27/16

For American Hardwood Industries



John O'Dea  
President & CEO

American Hardwood Industries  
Docket No. CWA-03-2016-0061DN

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Administrative Order on Consent" to the following persons:

John O'Dea  
President  
American Hardwood Industries  
567 N. Charlotte Avenue  
Waynesboro, Virginia 22980-2856

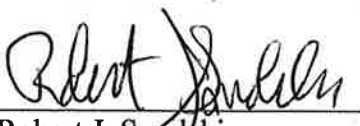
And the original and a copy delivered by hand to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Additionally, I caused to be sent by first class mail a copy of this "Administrative Order on Consent" to the following persons:

Jerome Brooks  
Office of Water Compliance  
Virginia Department of Environmental Quality  
P.O. Box 1105  
Richmond, Virginia 23218

Date: 2/10/2016

  
Robert J. Smolski  
Senior Assistant Regional Counsel